

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

LISA KURTZ and NORMAN KURTZ,

Plaintiffs,

- against -

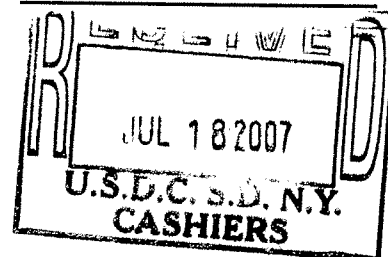
C.B. FLEET HOLDING COMPANY, INCORPORATED,  
C.B. FLEET COMPANY, INC., GENOVESE DRUG  
STORES, INC., ECKERD CORPORATION, and  
ECKERD STORE #5605,

Defendants.

**'07 CIV 6505**

2007 - CV

**NOTICE OF REMOVAL  
TRIAL BY JURY  
DEMANDED**



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C.B. FLEET HOLDING COMPANY, INCORPORATED and C.B. FLEET COMPANY, INC. (hereinafter collectively referred to as "FLEET") in accordance with 28 U.S.C. §§ 1332, 1441 and 1446, FED. R. CIV. P. 81 (c), and Local Civil Rule 81.1 of the United States District Courts for the Southern and Eastern Districts of New York, hereby remove the above-captioned action, which has been pending under Index No. 104208/07 Panel Case No.: 000512005 in the Supreme Court of the State of New York, County of New York, to the United States District Court for the Southern District of New York. In support of this Notice, removing defendants state as follows:

**BACKGROUND**

1. This lawsuit is a civil action within the meaning of 28 U.S.C. §§ 1441(b) and 1446(b). LISA KURTZ and NORMAN KURTZ (hereinafter collectively referred to as "plaintiffs"), served a Summons with Notice via certified mail on June 25, 2007 on FLEET. (See, Summons with Notice, annexed hereto as ***Exhibit "A"***). Upon information and belief, GENOVESE DRUG STORES, INC. (hereinafter "GENOVESE") and ECKERD

CORPORATION i/s/h/a "ECKERD CORPORATION and ECKERD STORE #5605" (hereinafter "ECKERD") were served a Summons with Notice on or about June 25, 2007.

2. According to the Summons with Notice, the basis for this action was plaintiff LISA KURTZ's use of Fleet Phospho-soda in February 2003. Plaintiffs allege that the use of Fleet Phospho-Soda resulted in plaintiff LISA KURTZ having chronic kidney failure. (See, Summons with Notice, annexed hereto as *Exhibit "A"*).

#### **AMOUNT IN CONTROVERSY**

3. The Summons with Notice alleges "judgment may be taken against you in the amount of at least \$ 15,000,000 in compensatory damages and \$ 75,000,000 in punitive damages, plus interest from the date of defendants' wrongful conduct, together with the costs and disbursements of the action." (See, Summons with Notice, annexed hereto, as *Exhibit "A"*). Thus, the damages sought by the plaintiffs places an amount in controversy that exceeds the \$75,000 threshold, exclusive of interest and costs.

#### **DIVERSITY OF CITIZENSHIP**

4. The plaintiffs, FLEET and ECKERD are of diverse citizenship. Upon information and belief, plaintiffs are residents of the State of New York. At the time of the commencement of this action and service of the Summons with Notice upon FLEET, FLEET was and is a corporation of the State of Virginia, with its principal place of business in the State of Virginia. GENOVESE is, and at the time of the commencement of this action and service of the Summons with Notice upon it, incorporated in the State of Delaware with its principal place of business in Camp Hill, Pennsylvania. ECKERD is, and at the time of the commencement of this action and service of the Summons with Notice upon it, incorporated in the State of

Delaware and has its principal place of business in Camp Hill, Pennsylvania. Finally, ECKERD owns and operates ECKERD STORE #5605 which is not a separate corporation or entity.

### **TIMELINESS OF REMOVAL**

5. This removal action is timely as it is being made within thirty days of service of plaintiffs' Summons with Notice. Plaintiffs served a Summons with Notice via certified mail on FLEET on June 25, 2007 and served a Summons with Notice on GENOVESE and ECKERD on June 25, 2007.

### **REMOVAL**

6. For the foregoing reasons, this Court has jurisdiction over this matter based on diversity of citizenship pursuant to 28 U.S.C. § 1332. The United States District Court for the Southern District is the district having jurisdiction over the place where the state court action is pending. Accordingly, this action may be removed to this Court pursuant to 28 U.S.C. § 1441.

7. All defendants required for removal have consented to and join in this removal. The written consent of GENOVESE and ECKERD is attached to this Notice as ***Exhibit "B"***.

8. A true and correct copy of all process, pleadings, and orders served upon the parties in this action to date have been filed and annexed to the instant petition for removal in accordance with 28 U.S.C. § 1446 (a). (*See*, Summons with Notice, annexed hereto as ***Exhibit "A"***).

9. A copy of this Notice of Removal has been filed with New York State Supreme Court, New York County and served on all parties pursuant to 28 U.S.C. § 1446 (d).

**WHEREFORE**, C.B. FLEET HOLDING COMPANY, INCORPORATED and  
C.B. FLEET COMPANY, INC hereby remove this case from Supreme Court of the State of New  
York, County of New York, to this United States District Court.

Dated: New York, New York  
July 18, 2007

Respectfully submitted,

HEIDELL, PITTONI, MURPHY & BACH, LLP

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Ms. Anita Ward  
Director of Claims  
Rite Aid Corporation  
Parent Company for  
GENOVESE DRUG STORES, INC. and  
STORES, INC., ECKERD CORPORATION i/s/h/a  
"ECKERD CORPORATION and ECKERD STORE #5605"  
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